



Roy G. Belcher was convicted of auto theft<sup>1</sup> as a Class D felony after a jury trial and was sentenced to one and one-half years executed. He appeals, raising the following restated issue: whether sufficient evidence was presented to support his conviction for auto theft.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

In February 2006, Belcher began working as an independent salesman for Auto Gallery, which was located in Allen County, Indiana. Auto Gallery was in the business of selling used cars, trucks, and other motor vehicles and was owned by Robert Wilder, Sr. and Wadidi Sudharq. In the Spring of 2006, Auto Gallery received a shipment of all-terrain vehicles (“ATVs”) to sell. When this shipment arrived, Belcher spoke with Wilder and expressed an interest in buying two of the ATVs. Wilder, who was in charge of the retail portion of the business, including the sale of ATVs, told Belcher that he would have to pay cash up front for the ATVs.

Some time after this conversation occurred, Belcher loaded two ATVs onto an Auto Gallery truck with the assistance of Sudharq and took the ATVs home. In May 2006, Wilder discovered that the two ATVs were gone and told Belcher to “either bring them back or pay for them.” *Tr.* at 63. Belcher asked him if they could work something out, but Wilder again insisted that Belcher either bring the ATVs back or pay for them. *Id.* Over the next few months, Wilder demanded that Belcher return or pay for the ATVs, but Belcher never complied. Wilder eventually fired Belcher from his employment at Auto Gallery on August

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<sup>1</sup> See Ind. Code § 35-43-4-2.5.

28, 2006.

Belcher never made any payments toward the purchase of the ATVs. On September 19, 2006, Belcher pawned the two ATVs at Premier Auto Pawn and received \$1,000. Belcher did not pay any of that money to Auto Gallery. In November 2006, when Wilder decided that Belcher was not going to return the ATVs, he called the police to report them as stolen. Sergeant Michael Vaughn of the Allen County Sheriff's Department investigated Wilder's report and spoke with Belcher. Belcher denied taking the ATVs and told Sergeant Vaughn that he had no knowledge regarding the officer's inquiry. *Id.* at 125. Sergeant Vaughn continued the investigation and discovered the ATVs on the department's pawn list. He then took Wilder to Premier Auto Pawn, and Wilder was able to identify the ATVs by matching the ignition keys he had in his possession to the vehicles. The State charged Belcher with one count of auto theft. A jury trial was held, and at the conclusion, Belcher was found guilty. He was sentenced to one and one-half years executed. Belcher now appeals.

### **DISCUSSION AND DECISION**

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a

reasonable doubt. *Williams*, 873 N.E.2d at 147; *Robinson*, 835 N.E.2d at 523.

Belcher argues that the State did not present sufficient evidence to support his conviction for auto theft. He specifically contends that the evidence did not establish that he exerted unauthorized control over the property of Auto Gallery with the intent to deprive the owners of the value or use of the ATVs. He alleges that he had an agreement with Wilder to make payments for the ATVs out of his commission checks and that the subsequent discussions with Wilder after he took the ATVs were to work out a payment plan. Belcher also claims that he could not have exerted unauthorized control over the ATVs because they were owned by both Wilder and Sudharq as co-owners of Auto Gallery, and Sudharq had knowledge that Belcher was taking the ATVs and assisted him in loading them.

In order to convict Belcher of auto theft, the State was required to prove that he knowingly or intentionally exerted unauthorized control over the motor vehicle of another person, with the intent to deprive the owner of the vehicle's value or use. Ind. Code § 35-43-4-2.5(b)(1). Control over the property of another person is “‘unauthorized’ if it is exerted: (1) without the other person's consent; (2) in a manner or to an extent other than that to which the other person has consented; . . . [or] (4) by creating or confirming a false impression in the other person.” Ind. Code § 35-43-4-1(b).

Here, looking at the evidence most favorable to the judgment, as we must do, the evidence established that Belcher took two ATVs from Auto Gallery without the permission or consent of Wilder, who was in charge of the ATV sales of the business. Belcher did not return the ATVs to Auto Gallery or pay for them when Wilder demanded that he do so.

Rather, Belcher pawned the ATVs at Premier Auto Pawn for the sum of \$1,000 and did not use that money to pay Wilder or Auto Gallery for the ATVs. Although both Wilder and Belcher agree that Belcher had requested to buy the ATVs, Wilder testified that he had told Belcher that he would have to pay cash for the ATVs because Belcher already owed Wilder money, and Wilder did not want to carry the debt for the ATVs. *Tr.* at 61, 173. Wilder also testified that he never authorized Belcher to take the ATVs, and that Belcher never made any payment for the ATVs. *Id.* at 173-74. Further, although Belcher claims that he had an agreement to pay for the ATVs through his commission checks, Wilder testified that he never had any payment arrangement with Belcher regarding the ATVs. *Id.* at 64. The evidence presented at trial was sufficient to support Belcher's conviction.

Belcher supports his arguments by pointing to the testimony of Billy Darmawam, another salesman who was working at Auto Gallery, and his own testimony regarding the payment agreement. "It is the fact-finder's role, not that of appellate courts, to assess witness credibility. . . ." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). The jury found this testimony not to be credible, and we cannot invade their role as fact-finder. Belcher further asserts that the fact that Sudharq, a co-owner, allowed Belcher to use a company truck to take the ATVs and assisted him in loading them onto the truck supports his contention that he had authorization to take the ATVs. There was no evidence that Sudharq had any authority to allow such a taking, that he actually did so, or that he even knew that Belcher intended to take the ATVs to his home and not to another customer. The evidence showed that Wilder was in charge of retail sales, including all ATV sales, and that Sudharq handled the buying

and reconditioning of the vehicles that the company sold; it did not show that Sudharq had any authority over the retail sales of ATVs. We believe that Belcher's arguments are merely a request for us to reweigh the evidence, which we cannot do. *Williams*, 873 N.E.2d at 147. Therefore, sufficient evidence was presented support Belcher's conviction for auto theft.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.